FILE COPY

Office-Supreme Court, U.S.
FILED
JUN 8 1959
JAMES R. BROWNING, Clerk

In The

SUPREME COURT of the UNITED STATES

OCTOBER TERM 1959

No. [redacted] 101

ROBERT D. ADAIR,
Petitioner

v.

WILLIAM M. STOKES, JR.
Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

G. KENNETH MILLER
1233 Mutual Building
Richmond, Va.
Counsel for Petitioner

TABLE OF CONTENTS

	Page
Opinions Below	1
Jurisdiction	2
Question Presented	2
Constitutional Provisions and Statutes Involved	2
Statement of the Case	4
Reason For Granting The Writ	5
Argument	5
The United States District Court Did Not Have Jurisdiction Over The Matter	5
Basis Upon Which Jurisdiction Is Claimed	10
Conclusion	13

INDEX TO APPENDIX

Opinion, U.S. Court of Appeals	15
Order Staying Mandate	23
Judgment, U.S. Court of Appeals	22
Letter Opinion	24

TABLE OF CITATIONS

Cases

Chicago, R.I. & R.R. v. McGlinn, 114 U.S. 542, 5 S. Ct. 1005, 29 L.Ed. 270 7

Craig v. Craig, 143 Kan. 624, 56 P.2d 464 9

Fort Leavenworth R.R. v. Lowe, 114 U.S. 525, 5 S. Ct. 995, 29 L.Ed. 264 ..... 5, 16

Hoffman v. Leavenworth Power Co., 91 Kan. 450, 138 Pac. 632 9

Mater v. Holley, 5 Cir., 200 F.2d 123 10

Misner v. Cleveland Wrecking Company, 25 F. Supp. 763 10

Other Authorities

United States Constitution, Article I, section 8, clause 17 ..... 2, 10, 13

28 U.S.C. 1254(1) 2

16 U.S.C.A., section 457 ..... 3, 12

28 U.S.C.A., section 1331 3

Kansas Session Laws, 1875 chapter 66, section 1 3

Kan. G.S. 1949, 27-102 4

In The
SUPREME COURT of the UNITED STATES
OCTOBER TERM 1959

No.

ROBERT D. ADAIR,
Petitioner;

v.

WILLIAM M. STOKES, JR.
Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

The Petitioner prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Fourth Circuit entered in the above case on April 8, 1959.

OPINIONS BELOW

The opinion of the Court of Appeals in this case (Ap. 15) has not been reported to date.

The opinion of the United States District Court for the Eastern District of Virginia has not been reported (Ap. 24).

JURISDICTION

The judgment of the Court of Appeals in this case was dated and entered on April 8, 1959 (Ap. 22). The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1). On May 8, 1959, the Court of Appeals entered an order extending for a period of 30 days from that date the period in which this Petition might be filed (Ap. 23).

QUESTION PRESENTED

Does the United States District Court have jurisdiction to hear and determine an action for personal injuries which occurred on the Fort Leavenworth Military Reservation when there is no diversity of citizenship between the parties?

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

United States Constitution, Article I, section 8, clause 17:

> "To exercise Legislation in all cases whatsoever, over such District (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of Congress, become the seat of the Government of the United States, and to exercise like authority over all places purchased by the consent

of the Legislature of the State in which the same shall be, for the Erection of Forts, . . ."

16 U.S.C.A. section 457:

"In the case of the death of any person by the neglect or wrongful act of another within a national park or other place subject to the exclusive jurisdiction of the United States, within the exterior boundaries of any State, such right of action shall as though the place were under the jurisdiction of the State within whose exterior boundaries such place may be; and in any action brought to recover on account of injuries sustained in any such place the rights of the parties shall be governed by the laws of the State within the exterior boundaries of which it may be."

28 U.S.C.A. section 1331:

"The District Courts shall have original jurisdiction of all civil actions wherein the matter in controversy exceeds the sum of value of $3,000., exclusive of interest and costs, and arises under the Constitution, laws or treaties of the United States."

Kansas Session Laws, 1875 Chapter 66, section 1:

"That exclusive jurisdiction be and the same is hereby ceded to the United States over and within all the territory owned by the United States, and included within the limits of the United States military reservation known as the Fort Leavenworth reservation, in said state, as declared from time to time by the President of the United States, saving, however, to the said state the right to serve civil or criminal process within said reservation, in suits or prosecu-

tions for or on account of rights acquired, obligations incurred, or crimes committed in said state, but outside of said session and reservation; and saving further to said state, the right to tax railroad, bridge and other corporations their franchises and property, on said reservation."

Kan. G.S. 1949, 27-102.

"That exclusive jurisdiction over and within any lands so acquired by the United States shall be, and the same is hereby, ceded to the United States, for all purposes; saving, however, to the State of Kansas, the right to serve therein any civil or criminal process issued under the authority of the state in any action on account of rights acquired, obligations incurred or crimes committed in said state, but outside the boundaries of such land; and saving further to said state the right to tax the property and franchises of any railroad; but the jurisdiction hereby ceded shall not continue after the United States shall cease to own said lands."

STATEMENT OF THE CASE

The plaintiff, William M. Stokes, Jr., filed his Complaint in the United States District Court for the Eastern District of Virginia against Robert D. Adair, alleging that he was injured in an automobile accident which occurred on the Fort Leavenworth Military Reservation, Kansas, on May 8, 1956. It was contended that the accident resulted from the negligence of Robert D. Adair, the defendant.

The parties were both residents of the State of Virginia.

The defendant in that Court filed his motion to dismiss upon the ground that no diversity of citizenship existed and no question arose under the Constitution, laws or treaties of the United States. The District Court sustained the motion and dismissed the action from which the plaintiff appealed to the Circuit Court of Appeals for the Fourth Circuit. The Circuit Court reversed the District Court's action holding that federal laws were involved.

REASON FOR GRANTING THE WRIT

In this case the Court of Appeals has decided an important question of law involving the laws existing upon lands owned by the United States of America which should be settled by this Court, as the decision, it is submitted by the Petitioner, is in conflict with the prior decisions of this Court.

ARGUMENT

THE UNITED STATES DISTRICT COURT DID NOT HAVE JURISDICTION OVER THE MATTER

The issue which arises in this matter is whether or not the United States has exclusive jurisdiction over the Fort Leavenworth Military Reservation so that federal laws are applicable rather than state laws. This military reservation was not purchased with the consent of the State of Kansas. Accordingly, it is the position of the Petitioner that the United States acquired exclusive jurisdiction for the purposes of a military reservation but that the laws of the State, not inconsistent with such purposes, remained in effect and are applicable to the accident giving rise to this claim.

The leading case on Federal enclosure areas arose in Kansas and concerns the Fort Leavenworth Post. In *Fort Leavenworth R.R.* vs. *Lowe*, 114 U.S. 525, 5 S.Ct. 995, 29 L. Ed. 264, the county levied taxes on the railroad line within the post. The railroad brought suit in the State Court to have the tax voided and refunded. The Kansas Supreme Court upheld the trial court's decision that the tax was valid. On appeal to this Court, the decision was affirmed relying on the exceptions in the Kansas Law of 1875.

In the course of the opinion, the Court traces the history of Federal enclosures and especially Fort Leavenworth. The land constituting Fort Leavenworth was part of the territory acquired in 1803 from France. The United States had at that time a proprietorship and a political dominion over the land. In 1861 Congress made Kansas a state. The act creating Kansas did not reserve any military reservations. Consequently, Kansas had full jurisdiction over Fort Leavenworth until 1875, when the cession law was passed.

This Court, per Mr. Justice Field, pointed out that the United States may acquire jurisdiction over state lands in three ways:

(1) According to the terms of the Constitution, Art. I, section 8, clause 17. In this case if the consent of the State Legislature is obtained for the purchase of the land, then the United States has exclusive jurisdiction. But without the consent of the state for the purchase, the United States acquires no exclusive political jurisdiction.

(2) The government owns the land and reserves

jurisdiction over it when the state in which the land is situated is admitted to the Union.

(3) The government buys the land or owns it as a proprietor and then the state cedes exclusive jurisdiction to the United States. Here the United States has exclusive political jurisdiction pursuant to the terms of the cession law.

Fort Leavenworth falls into category three. In such situations the State may make exceptions in the grant that are not repugnant to the purposes of the United States. Speaking for this Court, Mr. Justice Field stated (at page 1004 of the S. Ct. Report):

> "The Military Reservation of Fort Leavenworth was not, as already said, acquired by purchase with the consent of Kansas. And her cession of jurisdiction is not of exclusive legislative authority over the land, except so far as that may be necessary for its use as a military post; . . . ."

The tax imposed was valid in this case as it fell within the exception of the law of 1875.

Once the classifications of the *Lowe* case were made, the decision in *Chicago, R.I. & R.R.* v. *McGlinn*, 114 U.S. 542, 5 S.Ct. 1005, 29 L. Ed. 270, was apparent. McGlinn's cow strayed onto the military reservation at Leavenworth. It was struck and killed by the defendant's train. Under Kansas law a railroad was liable for the destruction of cows when the right of way was not fenced. McGlinn brought his suit in State Court where he obtained a judgment which was affirmed by the Kansas Supreme Court.

An appeal was perfected to this Court where the decision was affirmed. There Mr. Justice Field, again speaking for the court, answered the objection that Kansas law did not apply to a military reservation where the State had ceded exclusive jurisdiction, saying that the only way the United States can acquire exclusive jurisdiction is under the provisions of Art. I, section 8, clause 17 of the Constitution. This Court said (at page 1006 of the S.Ct. Report):

" * * *

This is the only mode prescribed by the Federal Constitution for the acquisition of exclusive power over it.

* * * "

This Court then laid down the rule (at page 1007 of the S.Ct. Report):

" * * * ———————————

The government of the State of Kansas extended over the reservation, and its legislation was operative therein, except so far as the use of the land as an instrumentality of the General Government may have excepted it from such legislation. In other respects, the law of the State prevailed.

* * * "

(Emphasis added)

The liability between private parties is not determined by the mere chance of where the negligence occurred. The Court expressed this theory saying (at page 1007 of the S.Ct. Report):

" * * *

> The liability of the Railroad Company for the killing of the cow did not depend upon the place where the animal was killed, but upon the neglect of the company to enclose the road with a fence which would have prevented the cow from straying upon it.

* * * "

The gist of the *McGlinn* and *Lowe* case is that unless the United States buys the land within a state with the consent and approval of the State Government, it does not have exclusive jurisdiction. In other cases, such as where political jurisdiction is ceded to the United States, the Federal Government has exclusive jurisdiction in so far as needed to fulfill the purposes of the United States concerning the post. The municipal laws of the state, laws regulating private rights, remain in effect unless inconsistent with the governmental purpose of the enclosure or repealed by the United States.

In *Hoffman* v. *Leavenworth Power Co.*, 91 Kan. 450, 138 Pac. 632 the plaintiffs brought a wrongful death action against the power company for the wrongful death of their son. The death occurred on the Fort Leavenworth Military Reservation. The defendant argued that as the death occurred on a reservation over which the United States has exclusive jurisdiction, no action could be maintained in the state court. The Kansas court relying on the McGlinn case held that the cession of jurisdiction was not of exclusive legislative authority over the land but only so far as necessary for its use as a military post. *Craig* v. *Craig*, 143 Kan. 624, 56 P.2d 464 (Kansas may grant divorce to residents of federal enclosures).

The power of exclusive legislation is to be exercised over places purchased with the consent of the Legislature of the state in which they are situated. When the states cede jurisdiction, they only cede it for the purpose consistent with the federal, governmental, or political aim.

BASIS UPON WHICH JURISDICTION IS CLAIMED

Mater v. *Holley*, 5 Cir., 200 F.2d 123, is one of the cases relied upon for federal jurisdiction. This case held that there is original jurisdiction of a cause for damages for personal injuries received while on a federal enclosure. However, it was conceded that Fort McPherson was within the provisions of Article I, section 8, clause 17, of the Constitution. Some courts have taken the position that even where an accident occurs on land bought by the United States with the consent of the state Legislature, there is no original federal jurisdiction under a law of the United States concerning the accident. *Misner* v. *Cleveland Wrecking Company*, 25 F. Supp. 763.

The Court in *Misner* v. *Cleveland Wrecking Company*, supra, discussed the question and stated as follows (at page 764 of the F. Supp.):

* * * *

> The object and purpose of a legislative enactment is of paramount importance in its construction and application. When Congress gave Federal Courts jurisdiction of actions arising under the Constitution and Laws of the United States it did so in order that Federal Courts should construe Federal Laws. It has

always been the province of the State Courts to construe the statutory laws of the State and Federal Courts have always accepted the meaning given to state statutes by State Courts as final. To what laws then did Congress refer when it provided that Federal Courts should have jurisdiction of actions arising under the laws of the United States? Did it mean the statutory or common law of a state which, because of peculiar and unusual circumstances, and for convenience, in the absence of an existing applicable law of the United States, should apply in certain isolated cases? If so, then there is a Federal common law in spite of the often repeated declaration to the contrary. If so, then what is to become of the rule that to come within the quoted clause of Sec. 41 an action must be one in which the right of recovery depends on Federal Statutes, St. Paul, M. & M. Ry. Co. v. St. Paul & N.P.R. Co., 8 Cir., 68 F.2? If so, to what ignominious obscurity is the often used guide of classification that a federal law must be an essential ingredient of the cause of action relegated? McGoon v. Northern Pac. Ry. Co., D.C., 204 F. 998.

If defendants' theory be correct then this court has jurisdiction because it may be necessary in this action to determine the proper construction to be given a law of the United States in determining plaintiff's right of recovery under the Missouri occupational disease statute and the Missouri common law. Defendant asserts that the occupational disease statute and the common law now occupy the role of Dr. Jekyll and Mr. Hyde and by reason of section 457, supra, are now in addition to being laws of Missouri, also laws of the United States which this Court must construe in determining defendants' liability. The bald assertion

of the theory discloses its absurdity. That theory amounts to this: A federal court must take jurisdiction of a case in order to construe laws which it is positively forbidden to construe. These laws are fundamentally and originally, at least, state laws. That is conceded. The state courts have the exclusive right to construe those laws. If it be conceded (as it is not) that these laws are the laws of the United States by adoption, then the law adopted is the law and its construction and since it is not suggested that the occupational disease statute has not been fully construed or the applicable Missouri common law has not been definitely declared by the Missouri courts there can be no opportunity for construction by this court."

From the foregoing it is apparent that even if Fort Leavenworth was acquired pursuant to Article I, section 8, clause 17 of the Constitution, the courts are not in harmony that federal jurisdiction is acquired of claims between private individuals who are residents of the same state. Indeed, 16 U.S.C.A., section 457, hereinbefore quoted specifically provides in part:

". . . and in any action brought to recover on account of injuries sustained in any such place the rights of the parties *shall be governed by the laws of the State within the exterior boundaries of which it may be.*" (Emphasis Added)

It is rather difficult to say that the foregoing statute does not mean exactly what it says and that the laws of Kansas are not applied to the rights of the parties to this litigation.

CONCLUSION

The Petitioner submits that the cases decided by this Court specifically state that the laws of the State of Kansas apply as to private matters between individuals occurring upon the Fort Leavenworth Military Reservation. Under the Constitution of the United States, Article I, section 8, clause 17, the State can secure exclusive legislative jurisdiction only through purchase with the consent of the State. As this provision was not complied with as to this military reservation the laws of the State, not inconsistent with the use of the land, remained in effect. Accordingly it is submitted that there is no basis for jurisdiction in the United States District Court and that the action of the Circuit Court of Appeals should be reversed. For this reason the Petitioner prays this Petition for a Writ of Certiorari be granted.

Respectfully submitted,

G. KENNETH MILLER
1233 Mutual Building
Richmond, Va.
Counsel for Petitioner

Dated: June 8, 1959

APPENDIX

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 7805.

WILLIAM M. STOKES, JR.,
Appellant,

versus

ROBERT D. ADAIR,
Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA, AT RICHMOND.
STERLING HUTCHESON, DISTRICT JUDGE.

(Argued March 16, 1959. Decided April 8, 1959.)

Before SOPER and HAYNSWORTH, Circuit Judges, and STANLEY, District Judge.

George E. Allen (Frank C. Maloney, III, and Allen, Allen, Allen & Allen on brief) for Appellant, and G. Kenneth Miller (John G. May, Jr., on brief) for Appellee.

SOPER, Circuit Judge:

This case raises the question whether the United States District Court in Richmond, Virginia, has jurisdiction of a suit brought by a citizen of the state to recover damages from another citizen of the state for injuries suffered by the plaintiff on the United States Military Reservation of Fort Leavenworth in the State of Kansas, when he was thrown violently against the windshield of an automobile driven by the defendant in what is alleged to have been a reckless and grossly negligent manner. Jurisdiction is claimed under 28 U.S.C. §1331, which gives the district courts "original jurisdiction of all civil actions wherein the matter in controversy exceeds the sum or value of $3000, exclusive of interests and costs, and arising under the Constitution, laws or treaties of the United States."

The District Judge granted a motion of the defendant to dismiss the complaint for lack of jurisdiction on the grounds that there was no diversity of citizenship and no question arising under the Constitution and laws of the United States. He relied on the decisions of the Supreme Court in *Fort Leavenworth R.R. Co.* v. *Lowe*, 114 U.S. 525, and *Chicago & Pacific Rwy. Co.* v. *McGlinn*, 114 U.S. 542, in which decisions of the Supreme Court of Kansas were affirmed. In the first case the Supreme Court of the United States held that the State of Kansas, in the act of the state legislature which granted exclusive jurisdiction over the Fort Leavenworth Reservation to the United States, had validly reserved the right to tax railroad property in the area; and in the second case the Supreme Court of the United States held that a state act of Kansas, which gave the owners of animals killed by railroad engines or cars the right to recover damages from the railroad

company, remained in effect after the Act of Cession was passed. The District Judge being of the opinion that these cases established that the rights of the parties in the pending case were governed by laws of Kansas, dismissed the complaint.

We learn from these decisions of the Supreme Court that the land on which the Reservation is located was part of the territory acquired by the United States from France in 1803 and had been used by the United States for military purposes for many years before the State of Kansas was admitted into the Union in 1861; and that at the time of the admission Congress failed, as it might have done, to except the place from the jurisdiction of Kansas and to reserve jurisdiction over it. This defect was cured in 1875 by an act of the state legislature, wherein exclusive jurisdiction over the territory within the Reservation was ceded to the United States, saving however to the state the right to serve civil and criminal processes and the right to tax railroad property therein. Since the land was not purchased with the consent of Congress it was held in *Fort Leavenworth R.R. Co.* v. *Lowe, supra*, that the case did not fall within the purview of Article 1, Section 18, Clause 17 of the Federal Constitution, which provides that Congress shall have power to exercise exclusive jurisdiction over all places purchased by the consent of the legislature of the state in which the same shall be for the erection of forts and other needful buildings. Since the territory was acquired without consent of the state, the Court held that jurisdiction over the area was not determined by the Federal Constitution but by the state act of cession and that the limitations contained therein, having been accepted by the United States, were valid and enforceable. Later, in *Chicago & Pacific R. R.*

Co. v. *McGlinn*, *supra*, the question arose as to what laws regulated the private rights of persons in the ceded area after the cession, and it was held that the laws of Kansas continued in force until abrogated by the new sovereign. It is because of this holding that it is now contended that the right of action which the plaintiff seeks to prosecute in the pending suit is founded on the laws of the State of Kansas and not the laws of the United States.

This conclusion is at variance with decisions rendered by the courts subsequent to the two Leavenworth decisions above discussed. By later opinions it has become clear that although the laws of the states governing the private rights of individuals persist in the ceded territories, they do not derive their authority from the state but from the Federal Government which has acquired exclusive legislative jurisdiction. In effect, the acceptance of jurisdiction over the ceded territory is tantamount to an adoption of the existing state laws by the Federal Government. Thus, in *Stewart & Co.* v. *Sadrakula*, 309 U.S. 94, the Court had under consideration an appeal from a judgment of a court of appeals of New York which had sustained a judgment for damages for accidental death on the site of the United States Post Office in New York which the United States had purchased with the consent of the state. The New York court had held that the state statute requiring the protection of places of work remained in effect after the cession and justified an award of damages to the decedent's estate. The Supreme Court of the United States in reviewing this decision stated (page 97) that the issue of law involved was whether an existing provision of a state statute remains effective *as a statute of the United States* applicable to the ceded territory after the Federal Government has acquired exclusive jurisdiction thereover; and the Court held that the

state statute "continues as a part of the laws of the federal territory." The Court said (pages 99-100):

> "It is now settled that the jurisdiction acquired from a state by the United States whether by consent to the purchase or by cession may be qualified in accordance with agreements reached by the respective governments. The Constitution does not command that every vestige of the laws of the former sovereignty must vanish. On the contrary its language has long been interpreted so as to permit the continuance until abrogated of those rules existing at the time of the surrender of sovereignty which govern the rights of the occupants of the territory transferred. This assures that no area however small will be left without a developed legal system for private rights. In *Chicago, R. I. & P. R. Co.* v. *McGlinn*, supra, a Kansas statute relating to recovery against a railroad for the injury to livestock on its right of way existed at the time of the cession to the United States of exclusive jurisdiction over Fort Leavenworth Military Reservation. It was held that the statute was carried over into the law covering the Reservation. Conversely, in *Arlington Hotel Co.* v. *Fant*, supra, an Arkansas statute relieving innkeepers, passed after cession of Hot Springs Reservation, was held unavailing as a defense to a Reservation innkeeper's common-law liability in accordance with Arkansas law before the cession. Such holdings assimilate *the laws of the federal territory*, where the Congress has not legislated otherwise, to the laws of the surrounding state."

It is clear from these decisions that after the cession of

jurisdiction to the United States the laws of the state not inconsistent with the transfer are still vital to fix the private rights of persons in the ceded area; but that they lose their character as laws of the state and become laws of the Union, and this transformation is implicit in the transfer of legislative jurisdiction without express act of Congress. It is also clear that only the state laws in effect at the time of the transfer of jurisdiction continue in effect and that subsequent statutes of the state are not part of the laws of the ceded area unless Congress takes action to keep them current. This has been done in certain fields of the law. Thus, by the Act of Congress of February 1, 1928, 16 U.S.C. §457, express provision was made that in actions for death or personal injury in places subject to the exclusive jurisdiction of the United States, the rights of the parties shall be governed by the laws of the state within whose exterior boundaries the wrong occurs. Likewise in the field of criminal law Congress for many years passed a series of assimilative crime acts by which the criminal laws of a state and the penalties thereby imposed were expressly taken over and incorporated in the federal system as laws of the United States applicable to areas in which exclusive jurisdiction had been ceded to the United States, but it was recognized that such statutes related only to such criminal laws as were in effect at the time of the cession and repeated acts were necessary to keep the federal laws current with the laws of the state. Finally Congress passed the Assimilative Crimes Act of 1948, 18 U.S.C. §13. This provides that persons guilty of acts or omissions in ceded territory which, although not made punishable by an act of Congress, would be punishable under state law if the act or omission occurred

in the surrounding state, shall be guilty of a like offense and subject to a like punishment. This statute was held constitutional in *United States* v. *Sharpnack*, 355 U.S. 286.

We are of the opinion that the District Court had jurisdiction of the pending case both under the general rule of law applicable when exclusive jurisdiction over territory is ceded by a state to the United States, and also under the express provisions of the act of February 1, 1928, 16 U.S.C. 457. The decisions of the courts of appeal are in accord. See *Capetola* v. *Barkley White Co.*, 3 Cir., 139 F.2d 556; *Mater* v. *Holly*, 5 Cir., 200 F.2d 123.

This decision does not mean that an action for personal injuries inflicted on a federal reservation may not be tried in a state court. On the contrary it is settled that actions for personal injuries being transitory in nature may be brought in any jurisdiction in which the defendant may be impleaded. *Ohio River Contract Co.* v. *Gordon*, 244 U.S. 68, 72; *Mater* v. *Holly*, supra.

The judgment of the District Court is reversed and the case remanded for further proceedings.

Reversed and Remanded.

JUDGMENT

Filed and Entered April 8, 1959.

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 7805.

William M. Stokes, Jr.,
Appellant,

vs.

Robert D. Adair,
Appellee.

APPEAL FROM the United States District Court for the Eastern District of Virginia.

THIS CAUSE came on to be heard on the record from the United States District Court for the Eastern District of Virginia, and was argued by counsel.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court appealed from, in this cause, be,

and the same is hereby, reversed with costs; and that this cause be, and the same is hereby, remanded to the United States District Court for the Eastern District of Virginia, at Richmond, for further proceedings in accordance with the opinion of the Court filed herein.

April 8, 1959.

MORRIS A. SOPER
United States Circuit Judge.

May 7, 1959, petition of appellee for stay of mandate filed.

ORDER STAYING MANDATE

Filed May 9, 1959.

(Style of Court and Title Omitted.)

Upon the petition of the appellee, by his counsel, and for good cause shown,

It is ordered that the mandate of this Court in the above entitled case be, and it is hereby, stayed pending the application of the appellee in the Supreme Court of the United States for a writ of certiorari to this Court, provided the

application for a writ of certiorari is filed in the Supreme Court within 30 days from this date.
May 8, 1959.

MORRIS A. SOPER
United States Circuit Judge.

LETTER OPINION OF COURT

Gentlemen:

Re: William M. Stokes, Jr. v.
Robert D. Adair -

Richmond Civil Action #2748 -

Upon consideration of the record and argument of counsel, it is my conclusion the motion to dismiss filed by defendant should be granted. The two cases of *Fort Leavenworth Railroad Company* v. *Lowe*, 114 U.S., 525, and *Chicago and Pacific Railway Company* v. *McGlinn*, 114 U.S., 542, appear to be directly in point and conclusive of the question here presented.

Very truly yours,
Sterling Hutcheson
United States District Judge